

SUPREME COURT OF HAWAI‘I

Wilton v. State, 116 Haw. 106

170 P.3d 357 (2007) · No. No. 27129 · Decided November 13, 2007

SUMMARY

The Supreme Court of Hawai‘i reviewed the denial of Freedus W. Wilton II’s Hawai‘i Rules of Penal Procedure Rule 40 petition alleging ineffective assistance of trial counsel. The court held that the lower court applied an incorrect standard and improperly resolved factual issues without an evidentiary hearing regarding evidence of Wilton’s multiple sclerosis and inability to run. It vacated the Intermediate Court of Appeals judgment and the circuit court’s order and remanded for an evidentiary hearing.

CASE DETAILS

COURT	Supreme Court of Hawai‘i
WRITING FOR THE COURT	Acoba, J.; Moon, C.J.; Levinson, J.; Nakayama, J.; Duffy, J.
JURISDICTION	Hawaii
DECIDED	November 13, 2007
DOCKET	No. 27129
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Petition for writ of certiorari seeking review of the Intermediate Court of Appeals' affirmance of the Circuit Court of the Second Circuit's denial of a Hawai‘i Rules of Penal Procedure Rule 40 petition alleging ineffective assistance of trial counsel.
STANDARD OF REVIEW	Findings of fact are reviewed for clear error; conclusions of law are reviewed under the right/wrong standard. In reviewing a Rule 40 petition, the court must determine whether the petition alleges facts that, if proven, would entitle the petitioner to relief, without weighing the credibility or evidentiary weight of the proposed evidence.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of Hawai‘i
PARTIES	Freedus W. Wilton, II v. State of Hawai‘i

TOPICS

state post-conviction relief

post-conviction relief

ineffective assistance

right to counsel

criminal procedure

PRACTICE AREAS

criminal procedure

state post-conviction relief

ineffective assistance of counsel

QUESTIONS PRESENTED

1. Whether the circuit court applied the correct Hawai‘i standard for determining whether omitted evidence possibly impaired a potentially meritorious defense in a claim of ineffective assistance of counsel.
2. Whether Wilton's Rule 40 petition presented a colorable claim requiring an evidentiary hearing based on allegations that counsel failed to present evidence concerning his multiple sclerosis and inability to run.
3. Whether the circuit court improperly weighed the credibility and effect of proposed evidence instead of determining whether, if taken as true, the allegations could change the verdict.
4. Whether the record established ineffective assistance based on counsel's advice that Wilton not testify.

HOLDINGS

1. To establish ineffective assistance of counsel, a defendant must show specific errors or omissions reflecting counsel's lack of skill, judgment, or diligence and that those errors or omissions resulted in the withdrawal or substantial impairment of a potentially meritorious defense. A potentially meritorious defense is evaluated by its possible, not probable, effect on the decision maker; actual prejudice is not required.
2. A Rule 40 petition must receive an evidentiary hearing when its allegations, if taken as true, would entitle the petitioner to relief or could change the verdict, unless the claim is patently frivolous. Wilton's allegations and supporting affidavits stated a colorable ineffective-assistance claim.
3. The circuit court erred by weighing the affidavits and speculating about how the jury would assess the proposed evidence, including whether the evidence was consistent or inconsistent with the perpetrator's conduct and Wilton's other physical activities.
4. On the existing record, Wilton did not establish ineffective assistance based on his failure to testify because the Tachibana colloquy showed that he understood the decision whether to testify was his and that his waiver was knowing and voluntary.

KEY QUOTATIONS

“If a Rule 40 petition raises a colorable claim of ineffective assistance of counsel, the court must hold an evidentiary hearing.” (170 P.3d at 373)

“It would appear that a court should not determine credibility or weight of the evidence in a HRPP Rule 40 proceeding.” (170 P.3d at 370)

FACTUAL BACKGROUND

A masked intruder broke into a Maui condominium, stabbed three occupants, and fled while pursued by a security guard. The victims and guard described a large man who was taller and heavier than Wilton, while police found in the condominium a handgun registered to Wilton and a Chicago Bulls cap similar to one he owned. No fingerprints, blood, or conclusive DNA evidence linked Wilton to the crime. Wilton later alleged that trial counsel had failed to present medical and witness evidence that his multiple sclerosis caused permanent weakness in his left leg and prevented him from running as the perpetrator reportedly had.

PROCEDURAL HISTORY

Wilton was convicted after a jury trial of burglary, robbery, attempted murder, and firearm- and weapon-related offenses and received a life sentence without parole plus concurrent terms and restitution. He filed a Rule 40 petition alleging that trial counsel was ineffective for failing to present evidence concerning his multiple sclerosis and inability to run, among other claims. The circuit court denied the petition without an evidentiary hearing, and the Intermediate Court of Appeals affirmed by summary disposition order. The Hawai'i Supreme Court accepted certiorari, vacated both lower-court decisions, and remanded for a full and fair evidentiary hearing concerning the claims related to the multiple-sclerosis evidence.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Vacate the Intermediate Court of Appeals' judgment and the circuit court's findings, conclusions, and order denying the Rule 40 petition. Conduct a full and fair evidentiary hearing on Wilton's claims concerning the multiple-sclerosis evidence, other than his own trial testimony, and provide trial counsel an opportunity to explain the challenged trial strategy.

CASES CITED

- State v. Wakisaka, 102 Hawai'i 504, 78 P.3d 317 (2003)
- State v. Aplaca, 74 Haw. 54, 837 P.2d 1298 (1992)
- Briones v. State, 74 Haw. 442, 848 P.2d 966 (1993)
- State v. Antone, 62 Haw. 346, 615 P.2d 101 (1980)
- State v. Morishige, 65 Haw. 354, 652 P.2d 1119 (1982)
- State v. Smith, 68 Haw. 304, 712 P.2d 496 (1986)
- Hutch v. State, 107 Hawai'i 411, 114 P.3d 917 (2005)
- Dan v. State, 76 Hawai'i 423, 879 P.2d 528 (1994)
- State v. Allen, 7 Haw. App. 89, 744 P.2d 789 (1987)
- Jones v. State, 79 Hawai'i 330, 902 P.2d 965 (1995)
- State v. De Guair, 108 Hawai'i 179, 118 P.3d 662 (2005)
- Turner v. State, 93 Hawai'i 298, 1 P.3d 768 (2000)
- State v. Moses, 107 Hawai'i 282, 112 P.3d 768 (App. 2005)

- Matsuo v. State, 70 Haw. 573, 778 P.2d 332 (1989)
- State v. Richie, 88 Hawai‘i 19, 960 P.2d 1227 (1998)
- Foo v. State, 106 Hawai‘i 102, 102 P.3d 346 (2004)
- State v. Okumura, 78 Hawai‘i 383, 894 P.2d 80 (1995)
- State v. Bui, 104 Hawai‘i 462, 92 P.3d 471 (2004)
- State v. Silva, 75 Haw. 419, 864 P.2d 583 (1993)
- In re Doe, 107 Hawai‘i 12, 108 P.3d 966 (2005)
- State v. Lubong, 77 Hawai‘i 429, 886 P.2d 766 (App. 1994)
- State v. Diaz, 100 Hawai‘i 210, 58 P.3d 1257 (2002)

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